GOLDEN EAGLE PETROLEUM

IBLA 81-905 Decided September 15, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offers. OR 26655 through OR 26662.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Patented or Entered Lands -- Withdrawals and Reservations: Effect of

   BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

APPEARANCES: Frank A. Wilson, Esq., Portland, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Golden Eagle Petroleum has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated June 30, 1981, rejecting appellant's noncompetitive over-the-counter oil and gas lease offers, OR 26655 through OR 26662. On May 12, 1981, appellant filed with BLM eight oil and gas lease offers, pursuant to section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976). In its June 1981 decision, BLM rejected appellant's lease offers because they were neither accompanied by statements of qualifications, as required by either 43 CFR 3102.2-4 (associations including partnerships) or 43 CFR 3102.2-5 (corporations), nor included a reference to an appropriate qualifications file. In addition, BLM rejected the offers because the copies of the official form were not signed in ink, as required by 43 CFR 3111.1-1(a)(1).

On July 2, 1981, appellant filed with BLM new oil and gas lease offers, including copies signed in ink and statements of corporate qualifications. In its statement of reasons for appeal, appellant contends that it earned priority as of the time of its original filing because its failure to submit the requisite documents constituted "mere technical errors" and because it relied on representations by BLM employees that "no other documents" needed to be filed.

[1] It is well established that submission of a corporate qualifications statement with an oil and gas lease offer in accordance with 43 CFR 3102.2-5, or reference to a qualifications file where such material has previously been filed, is mandatory and that failure to do so will result in rejection of the offer. Ari-Mex Oil & Exploration, Inc., 53 IBLA 37 (1981), and cases cited therein. However, a defective filing may be remedied and the offer will earn priority as of that date where the required information is subsequently filed, in the absence of an intermediate junior offer. Horn Silver Mines Co., Inc., 60 IBLA 107 (1981), and cases cited therein.

In the present case, appellant's lease offers were defective when originally filed. On July 2, 1981, appellant submitted statements of corporate qualifications. The statements included all of the information required by 43 CFR 3102.2-5(a), including the names and addresses of all stockholders holding more than 10 percent of the corporate stock. However, 43 CFR 3102.2-5(b) also requires that "not later than 15 days after the filing of an offer," a corporate offeror shall file "[a] separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth the stockholder's citizenship, percentage of corporate stock owned or controlled and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title." (Emphasis added.) The July 1981 qualifications statements indicated that Charles Richie and Dave Block each own more than 10 percent of the corporate stock. The statements, however, were only signed by Charles Richie. On August 19, 1981, a supplemental statement was filed with BLM, signed by Dave Block. Accordingly, appellant would not be entitled to earn priority as to its lease offers until August 19, 1981. 1/

Regardless of that conclusion, information supplied to the Board in the transmittal memorandum from the BLM State Office, dated August 5, 1981, indicates that the land is not subject to leasing under section 17 of the Mineral Leasing Act, supra. Accordingly, for that reason alone appellant's lease offers must be rejected.

1/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102, effectively eliminating the requirement to file the statement of corporate qualifications found in 43 CFR 3102.2-5. See 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. Redwood Empire Land and Royalty Co., 64 IBLA 267, 269 n.1 (1982). In the present case, however, appellant's lease offers are subject to rejection for another reason.

The record indicates that each of appellant's lease offers involves land which was withdrawn for the Oregon Dunes National Recreation Area, pursuant to section 10 of the Act of March 23, 1972, P.L. 92-260, 86 Stat. 99 (1972). Section 10 provides that "lands within the recreation area * * * are hereby withdrawn * * * from disposition under all laws pertaining to mineral leasing and all amendments thereto." 86 Stat. 101 (1972). In addition, lease offers OR 26655 through OR 26662 include land which was either patented, without a reservation of minerals to the United States, or has acquired land status. 2/

Under well established principles of law, the land sought by appellant is not available for oil and gas leasing pursuant to section 17 of the Mineral Leasing Act, supra. Land which has specifically been withdrawn from mineral leasing is not subject to oil and gas leasing. Chevron U.S.A., Inc., 52 IBLA 278 (1981); Edward C. Shepardson, 47 IBLA 223 (1980). Further, land which has been patented with no reservation of oil and gas to the United States is not subject to oil and gas leasing. Yolana Rockar, 19 IBLA 204 (1975); El Paso Products Co., 10 IBLA 116 (1973). Finally, an oil and gas lease offer filed pursuant to section 17 of the Mineral Leasing Act, supra, for acquired land, affords the offeror no rights to the land. Duncan Miller, A-28267 (June 8, 1960). Such lands may be leased only in response to an application filed pursuant to the Mineral Leasing Act for Acquired Lands, enacted August 7, 1947, 30 U.S.C. § 351 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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James L. Burski
Administrative Judge

We concur:

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Anne Poindexter Lewis
Administrative Judge

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Edward W. Stuebing
Administrative Judge

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2/ Lease offer OR 26660 includes land that was patented with a reservation of oil and gas to the United States. This land, along with the public and acquired lands involved herein, would be subject to the withdrawal for mineral leasing.